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Summary record of the 29th meeting
Held at Headquarters, New York, on Thursday, 28 October 2004, at 3 p.m.

Chairman: Mr. Kuchinsky ..... (Ukraine)
later: Ms. Astanah Banu (Vice-Chairman) ..... (Malaysia)

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* Items which the Committee has decided to consider together.

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04-57647 (E)

The meeting was called to order at 3.05 p.m.

Agenda item 101: Promotion and protection of the rights of children (*continued*) (A/C.3/59/L.28)

Draft resolution A/C.3/59/L.28: The situation of and assistance to Palestinian children

1. **Ms. Khalil** (Egypt), introducing the draft resolution on behalf of the original sponsors and China, Djibouti and Mauritania, said the situation in the occupied Palestinian territories continued to deteriorate at an alarming rate. The resolution referred to the most vulnerable sectors of Palestinian society and was similar to the one adopted the previous year, but updated to reflect recent developments. She hoped that the draft resolution would be adopted by consensus.

Agenda item 94: Social development, including questions relating to the world social situation and to youth, ageing, disabled persons and the family (*continued*) (A/C.3/59/L.15/Rev.1)

(b) United Nations Literacy Decade: education for all (*continued*) (A/C.3/59/L.15/Rev.1)

Draft resolution A/C.3/59/L.15/Rev.1: United Nations Literacy Decade: education for all

2. **The Chairman** said that the draft resolution contained no programme budget implications.

3. **Mr. Gansukh** (Mongolia), speaking on behalf of the sponsors, said that Angola, Andorra, Armenia, Belgium, Belize, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Canada, the Congo, Cyprus, the Democratic Republic of the Congo, Egypt, Fiji, Israel, Italy, the Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Monaco, Morocco, Namibia, the Netherlands, Nigeria, the Philippines, Portugal, Qatar, Saudi Arabia, Sierra Leone, Switzerland, the Syrian Arab Republic, Tunisia, Turkey, Uzbekistan and Zambia had joined the sponsors.

4. *Draft resolution A/C.3/59/L.15/Rev.1 was adopted.*

Agenda item 96: Crime prevention and criminal justice (*continued*) (A/C.3/59/L.21)

Draft resolution A/C.3/59/L.21: United Nations African Institute for the Prevention of Crime and the Treatment of Offenders

5. **The Chairman** said that the draft resolution contained no programme budget implications.

6. **Mr. Ndimeni** (South Africa), speaking on behalf of the sponsors members of the Group of African States, said that Qatar and South Africa had joined the sponsors.

7. *Draft resolution A/C.3/59/L.21/Rev.1 was adopted.*

Agenda item 98: Advancement of women (*continued*) (A/C.3/59/L.25)

Draft resolution A/C.3/59/L.25: Working towards the elimination of crimes against women and girls committed in the name of honour

8. **The Chairman** said that the draft resolution contained no programme budget implications and that Bulgaria, Guatemala, Jordan, Monaco, Peru, San Marino, Serbia and Montenegro, Thailand, Ukraine and Venezuela had joined the sponsors.

9. **Mr. Wood** (United Kingdom) said that the United Kingdom and Turkey had taken over from the Netherlands as the main sponsors of the draft resolution. They had held wide consultations and had attempted to take all views into account. The scope of the draft resolution had been extended to include girls, as well as the role of men in preventing such crimes.

10. Andorra, Armenia, Bosnia and Herzegovina, Botswana, Cape Verde, Chile, the Dominican Republic, Fiji, France, Georgia, Honduras, Iceland, Iraq, Kazakhstan, Kenya, Liechtenstein, Lithuania, Malta, Morocco, Namibia, New Zealand, Panama, Paraguay, the Republic of Korea, Senegal, South Africa, Tunisia and Turkmenistan had also joined the sponsors.

11. *Draft resolution A/C.3/59/L.25 was adopted.*

12. **Mr. Ballestero** (Costa Rica) said that Costa Rica had been unable to sponsor the draft resolution. Since the 1994 United Nations International Conference on Population and Development, Costa Rica had adopted the terminology used in the Programme of Action of the Conference to refer to such topics as sexual health

and reproduction rights. Subsequently, his delegation had often explained the significance of that decision in terms of domestic legislation, which could never be interpreted to include the possibility of abortion, since Costa Rica had always been characterized by its respect for human life. Unfortunately, paragraph 3 (i) incorporated a mention of health-care services in the areas of sexual and reproductive health, which Costa Rica considered was not pertinent. It supported the substance of the resolution but wished to place its position on record.

13. **Ms. Moore** (United States of America) said that, in joining the consensus, the United States wished to explain that it was firmly committed to eradicating honour crimes and that it had established provisions to allow potential victims to apply for asylum or refugee protection, under certain circumstances. However, it had concerns with regard to paragraph 3 (i), which "called upon States to provide health-care services, including in the areas of sexual and reproductive health": it did not understand the phrase which appeared to constitute an endorsement of abortion or the use of abortifacients.

Agenda item 105: Human rights questions (*continued*) (A/59/225, 371 and 425)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (A/59/255, 319, 320, 323, 327, 328, 341, 360, 366, 377, 385, 401-404, 422, 428, 436 and 525)

(c) Human rights situations and reports of special rapporteurs and representatives (A/59/256, 269, 311, 316, 340, 352, 367, 370, 378, 389 and 413; A/C.3/59/3)

(e) Report of the United Nations High Commissioner for Human Rights (A/59/36)

14. **The Chairman** invited the Committee to continue its dialogue with the Special Rapporteur on the right to food.

15. **Mr. Pato** (Togo), noting that his country had been the victim of sanctions, asked whether the Special Rapporteur had examined the situation and said that it would be interesting to know his opinion.

16. **Ms. Li Wen** (China) said that China did not consider that people from the Democratic People's Republic of Korea who illegally crossed the border into China for economic reasons were refugees. Regarding the status and conditions of refugees, the Special Rapporteur should refer to the 1951 Convention relating to the Status of Refugees, which did not contain any reference to refugees from hunger. Her Government had always made appropriate arrangements for the people referred to in the report, in accordance with domestic and international laws and humanitarian principles. The issue had nothing to do with the right to food.

17. **Mr. Saran** (India) said that India looked forward to receiving the visit of the Special Rapporteur at a mutually agreed time. However, it believed that the nature of the right to food should be examined in the context of the availability of resources within each State, and the litmus test had to be the degree to which States could fulfil their obligations.

18. His delegation considered that the manner in which the Special Rapporteur's report (A/59/385), dealt with the question of the development of the fisheries sector in India was rather incomplete. The coastline of India was several thousand kilometres long and the issue raised in the report had to be viewed against the overall food production in the country over the past 55 years. It would have been helpful if the Special Rapporteur had cross-checked the information he had received with official data.

19. More fundamentally, the problem referred to by the Special Rapporteur was more in the nature of an economic issue than a human rights violation by the State. Essentially, it reflected the type of structural shift that was seen all the time in developing economies; such shifts were a normal part of economic growth and reflected the play of market forces within the country. India hoped that the future work of the Special Rapporteur would correspond to the mandate assigned to him.

20. **Mr. Ziegler** (Special Rapporteur on the right to food), said that the problem of hunger related to the allocation of food rather than to its production. Since the market could not distribute food fairly, the normative approach was the only solution. Owing to limitations of space, his report did not mention that Togo was suffering from sanctions imposed by the European Union, which severely affected its economy.

However, like most members of the Committee, he opposed all unilateral coercive measures, whether against Togo, Iraq or Cuba.

21. In reply to the representative of China, he said that the problem of the people from the Democratic People's Republic of Korea who crossed the border into China rather than face starvation could not be resolved by international law. A political solution had to be sought. He agreed that, under the 1951 Convention, they were not strictly refugees; but their situation constituted an immense humanitarian tragedy.

22. Since the Democratic People's Republic of Korea had not allowed him to visit the country, he was obliged to use secondary sources. Amnesty International had just published a comprehensive report entitled "Starved of Rights: Human Rights and the Food Crisis in the Democratic People's Republic of Korea", which concluded that over 6 million people were seriously malnourished, and many of them were at risk of dying. It was normal that they would try to flee to the nearest country; but, from a humanitarian standpoint, it was not acceptable that China would return them, since reports indicated that those repatriated were disappearing into forced labour camps.

23. Consequently, China should seek a solution in collaboration with the international community. If it was unable to allow those who fled to remain, one solution would be to send them to a third country, and some countries in the region had already agreed to receive them.

24. In reply to the representative of India, he said the issue raised in paragraph 53 of the report (A/59/385) was not the realization of an economic right but peasants' loss of their land. The Supreme Court of India had demanded an immediate change in the situation, through a cutback in shrimp farming and the return of the peasants' land.

25. **Mr. Pak** Tok Hun (Democratic People's Republic of Korea) said the Special Rapporteur was still politicizing human rights issues. How else was it possible to interpret the Special Rapporteur's statement that issues relating to the right to food could be solved politically? Human rights and politics should not be mixed.

26. There had been a long history of border crossings even before the food crisis, but numbers had increased since the mid-1990s. Most people nevertheless returned to their homes in the Democratic People's Republic of Korea and were neither executed nor sent to labour camps. His Government had provided all the relevant facts to the Human Rights Committee in 2001. He was surprised at the Special Rapporteur's biased position. If the Special Rapporteur listened to those hostile to his country, he must also give a fair hearing to the people of the country. How could he trust an NGO such as Médecins sans frontières, which had been expelled from the Democratic People's Republic of Korea for illegal acts?

27. **Mr. Ziegler** (Special Rapporteur on the right to food), speaking in a personal capacity, said the basic problem was that, despite an acute crisis which put one quarter of the country's population at risk, the Democratic People's Republic of Korea consistently refused to allow any special rapporteurs to enter the country to assess the situation at first hand. On the basis of his long academic experience, he considered the secondary sources at his disposal to be perfectly credible. On the issue of politicization, he said special rapporteurs had very limited mandates, which were established within the framework of international humanitarian and human rights law. They did not concern themselves with politics.

28. **Mr. Pinheiro** (Special Rapporteur on the situation of human rights in Myanmar), introducing his interim report (A/59/311), said that he had been obliged to rely on secondary sources in preparing his report since he had not been permitted to carry out a fact-finding mission in Myanmar.

29. Despite the revival of the National Convention earlier in the year, the challenges should not be underestimated. Serious concerns remained about the National Convention's inclusiveness and the conduct of its proceedings. The ceasefire groups, comprising ethnic minority-based former armed opposition groups, had attended as "specially invited guests" and the National League for Democracy (NLD) and other political parties that had won a majority of seats in the 1990 elections had not participated. He hoped the process would yield results despite the recent change in the Government, but the outcome would be seen only at subsequent sessions of the National Convention.

30. A major step forward could be taken if certain fundamental human rights obligations were fulfilled. Human rights reforms should start by revoking security

legislation restricting the full exercise of basic human rights, and the administration of justice should be revised to restore respect for due process rights. A credible process of national reconciliation and political transition would not be possible without the early release of the more than 1,300 political prisoners and the relaxation of restrictions on the operation of political parties and ceasefire partners. Progress on that point would help both in improving the atmosphere within and outside the country and in normalizing Myanmar's relations with the international community for the benefit of all the peoples of Myanmar.

31. The immediate release of Daw Aung San Suu Kyi and all other politicians would enable them to play a constructive role in the transition, and a settlement with the ceasefire groups that took account of their suggestions would be a significant contribution to the process. No real development and democratization would be successful, however, without the participation of all the peoples of Myanmar.

32. Turning to the human rights situation in the country as a whole, he said he had recently received allegations of continuing sexual violence against ethnic women by armed forces throughout Myanmar. He took note of the preparations being made by the Government to dispatch investigating teams to the areas concerned and renewed his own offer to carry out an independent assessment of the allegations.

33. Lastly, he said that, while the decline in opium cultivation revealed by a recent survey carried out by the United Nations Office on Drugs and Crime was commendable, opium-growing communities would become less vulnerable to human rights abuses, human trafficking and forced relocation only if they were provided with sustainable alternative sources of income. He was pleased to note that the Government of Myanmar agreed with that view.

34. **Mr. Win** (Myanmar) said the complicated political atmosphere that currently prevailed in the world had led certain Member States to conclude that the time was not right to invite special rapporteurs to visit their countries. Moreover, special rapporteurs were under pressure from powerful Member States to exceed their mandates and venture into the grey areas of human rights and internal political affairs. Successive delegations of Myanmar had found all the holders of the various mandates relating to the situation of human rights in Myanmar to be biased and politically motivated, and their reports to be based on unfounded allegations. The main reason Myanmar had continued to invite them to visit was that cooperation with the United Nations was a cornerstone of its foreign policy. In the particular case of the current mandate-holder, it was the Special Rapporteur's integrity and credentials that had led Myanmar to accommodate his requests to visit the country. The Special Rapporteur's current request was still under consideration.

35. That having been said, some of the points made by the Special Rapporteur needed rectification.

36. The National Convention would certainly reconvene notwithstanding the change of Prime Minister. There was thus no reason for apprehension concerning its outcome. Nor was there any cause for concern with regard to the deliberations between the delegates to the Convention on matters concerning former ceasefire groups of the ethnic nationalities. He took note of the Special Rapporteur's acknowledgement that, in terms of conflict resolution, the National Convention might provide a unique opportunity for ethnic nationalities and agreed that the challenges should not be underestimated. His Government regretted the fact that the National League for Democracy (NLD) and its minor political allies had declined the invitation to attend the historic National Convention.

37. It was hoped that the peace between the nationalities of Myanmar would be further consolidated as the country progressed along the seven-point road map leading to the emergence of a new constitution, on the basis of which new elections would be held. That evolutionary approach was accepted by the silent majority in preference to other models of overnight transformation where elections were held amid bombings and loss of life. The Special Rapporteur could rest assured that the voice of the people would be heard when the time came for elections: all Myanmar citizens living inside or outside the country would have the legitimate right to vote.

38. Perceptions of Myanmar's progress in human rights were very different in Asia and in Europe. Most of Myanmar's neighbours and the Association of South-East Asian Nations (ASEAN) had welcomed developments in that regard.

39. Certain points made by the Special Rapporteur had no credible basis other than propaganda put out by

splinter groups and hastily formed NGOs, which used popular human rights and environmental issues in an attempt to attract international attention and mislead the international community. The newly reconciled nationalities would collectively defend Myanmar's sovereignty by whatever means necessary. Veiled attempts, in the name of human rights, to cause Myanmar's security forces to withdraw from reclaimed border areas would not be negotiable.

40 Myanmar hoped to continue cooperating with the United Nations as long as its own vital interests were not at risk. That cooperation and the steps taken thus far in the political transition should not be interpreted as a sign of weakness. Any intrusive attempts to undermine or compromise its interests and national sovereignty, including by manipulating the United Nations mechanism, would be strongly resisted.

41. **Ms. Moore** (United States of America) said that the ouster of the Prime Minister on 19 October 2004 indicated that the hardliners had consolidated their grip on power in Myanmar, and she would welcome the views of the Special Rapporteur on the situation. She also asked if he had any further information on NLD supporters who had been arrested and imprisoned during the summer.

42. *Ms. Astanah Banu (Malaysia), Vice-Chairman, took the Chair.*

43. **Mr. de Klerk** (Netherlands), speaking on behalf of the European Union, asked how serious a threat he considered the continued detention of NLD leaders. He would also like to know if there was further information on allegations of sexual violence by the security forces and recruitment of child soldiers.

44. **Ms. Feeney** (Australia) asked what further steps could be taken to eliminate forced labour and enhance cooperation with the International Labour Organization (ILO).

45. **Ms. Futschek** (New Zealand) said her delegation was dismayed that the Special Rapporteur had not been able to visit and asked if there had been any contacts with the new Prime Minister.

46. **Mr. Pinheiro** (Special Rapporteur on the situation of human rights in Myanmar) said that, like the members of the Committee, he had no first-hand information on the situation inside Myanmar, as he had not been able to visit. Although he would be tempted to interpret the reports received, he preferred to wait and judge the new Government based on its actions. He had been pleased to hear the representative of Myanmar say that the road map and the National Convention would continue and that the Government remained committed to the political transition. However, in an environment of transition, the detention and sentencing of NLD members was not helpful. In every political transition it was important for the full spectrum of opinion to participate, and rather than in detention, NLD members belonged in society, helping to facilitate the transition.

47. He hoped to have the opportunity to investigate the allegations of sexual violence, and had taken note of the joint plan of action of the Government and UNICEF for demobilization of child soldiers. Further steps to eliminate forced labour were already well-defined; it was simply a question of implementing the agreements reached with ILO. Although there had been no direct contacts with the new Prime Minister, he had been in contact with representatives of Myanmar in Geneva, London, New York and Brazil.

48. He acknowledged that progress had been made, but more effort was needed to guarantee the exercise of freedom of assembly, freedom of movement and freedom of the press.

49. **Mr. Vigny** (Switzerland) asked whether the Special Rapporteur had any other diplomatic means to accomplish his mandate, since his visits to Myanmar had been deferred. It would also be helpful to hear his views on the value of the ILO presence in the country.

50. **Mr. Takase** (Japan) said that his delegation took note of the concerns addressed in the written report regarding the recruitment of child soldiers, and asked if the Special Rapporteur had any further information on the cooperation between the Myanmar Government and UNICEF to prevent such recruitment.

51. **Ms. Verrier-Fréchette** (Canada) said that her delegation was concerned about the credibility of the National Convention process which appeared to lack transparency. It would welcome the views of the Special Rapporteur on the prospects for its success, given the change in leadership.

52. **Mr. Sar** (Cambodia) said that, in the view of his delegation, Myanmar had made progress in various areas. The State Peace and Development Council had already ended the recruitment of child soldiers and signed the ILO conventions against forced labour. There was no racial discrimination in the country, and

60 per cent of the minority ethnic groups were represented in the legislature. He hoped that the draft resolution to be placed before the Committee would reflect the current reality in the country.

53. **Mr. Cho Tae-ick** (Republic of Korea) said that the strong engagement of the international community in reform of human rights in Myanmar was essential. His delegation would like to know whether the Special Rapporteur saw the Myanmar Human Rights Committee as independent and how it could be strengthened. It would also like to know about available advisory or technical services in human rights that might be helpful.

54. **Mr. Pinheiro** (Special Rapporteur on the situation of human rights in Myanmar) said that the best he could do was to continue his efforts to convince the Government of Myanmar that it was in its interest to invite him to visit. He had asked other countries in the region to advocate in his behalf in the meantime. The presence of ILO in the country was very useful and major progress had been achieved, which must be sustained. The establishment of the Myanmar Human Rights Committee had also been very welcome, even though it had not been established according to the Paris Principles. Several countries in Asia had established such national committees before democracy had been achieved, so it was a hopeful sign.

55. Technical assistance was available through UNDP, global funds and international human rights NGOs. He had not received information from UNICEF regarding the initiative for the demobilization of child soldiers, but it had reported that its cooperation with the Government had been positive. In another welcome development in that area, Myanmar had submitted its report to the Committee on the Rights of the Child and had accepted a visit by Committee representatives.

56. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea) said that, having been appointed only recently, he had had insufficient time to prepare a full report and would simply make an oral statement. He noted that some constructive elements could be reported regarding the situation of human rights in the Democratic People's Republic of Korea. The country was a party to four key human rights treaties: the two International Covenants on Human Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Intermittently, it had allowed human rights actors from outside to enter the country to assess the human rights situation there; in 2004, members of the Committee on the Rights of the Child had been invited to visit, as well as the Special Rapporteur on violence against women. A variety of United Nations agencies were working in the country on a number of issues, and there had been some warming of relations with some countries both in the region and beyond. Like many countries, it already had some legal and operational infrastructure which could help to promote and protect human rights, including the Constitution of 1972 and its amendments of 1992 and 1998 and other national laws.

57. However, there were key challenges concerning implementation of human rights. With regard to the right to food and the right to life, catastrophic food shortages brought about by floods and drought had occurred during the mid-1990s, compounded by power imbalances and inadequate response from the power structure. The situation had improved, but humanitarian emergency assistance was still needed. There were continuing debates concerning how much of the food aid provided from abroad actually reached the target population. While some monitoring of the distribution of food aid was in place, random checks by foreign humanitarian organizations were still not permitted by the national authorities.

58. There were many reports concerning alleged violations of the right to security of person, humane treatment, non-discrimination and access to justice. Prisons and detention centres were below international standards, and such practices as preventive or administrative detention without access to the courts were widespread. The practice of collective punishment, where members of the family of a person punished for a political or ideological crime were also punished, had been documented by various sources. The authorities had admitted to abducting a number of Japanese nationals. Some cases had been resolved bilaterally, but there were serious grounds for concern.

59. The right to freedom of movement was also of concern. Strict controls were imposed on the movement of people, and a traveller's certificate must be obtained to move from one area of the country to another. Nationals of the Democratic People's Republic of Korea had also crossed national borders for two main reasons: political persecution and the food crisis. Persons who had left the country without an exit visa

might also be punished upon return. There were increasing numbers of women among new arrivals in many countries, which was of special concern because of the danger of human traffickers preying on women seeking asylum.

60. While the national authorities claimed that there were freedom of information, freedom of expression and opinion and freedom of association and religion, the reality often indicated the contrary. With regard to freedom of religion, while there were some reports of liberalization, the extent to which it was genuine was uncertain.

61. With regard to the rights of women and children, there had been major achievements in both areas before the food crisis, which had begun in 1995. Since that time, they had become more vulnerable after leaving their homes in search of employment and food.

62. To promote and protect human rights in the Democratic People's Republic of Korea, the Government must abide by international human rights standards and reform laws and practices inconsistent with those standards. It must uphold human rights together with democracy, peace, sustainable development and demilitarization, with greater space for civil society participation. There must be respect for the rule of law, particularly the promotion of an independent and transparent judiciary with safeguards for detainees and protection against the abuse of power, along with reform of the administration of justice, particularly improvements to the prison system. The root causes of displacement must be addressed and the persecution and victimization of displaced persons must be prevented. The Government must ensure that humanitarian assistance, including food aid, reached the target groups, with unimpeded access for monitoring and accountability. The Special Rapporteur and other mechanisms, as appropriate, should be invited to visit the country to take stock of the human rights situation and to recommend reforms. Technical assistance from the Office of the High Commissioner for Human Rights and other agencies, as appropriate, should be sought to support activities to protect human rights.

63. The international community could help by influencing the Government to follow those recommendations, and by upholding the protection of refugees and other displaced persons and ending bilateral and other arrangements which jeopardized the lives of asylum-seekers. It could also help to ensure that assistance reached the vulnerable groups and that humanitarian groups had unimpeded access.

64. **Mr. Takase** (Japan) asked what the next steps should be and if there were any specific areas where Member States could contribute to the promotion of human rights in the Democratic People's Republic of Korea.

65. **Ms. Bakker** (Netherlands), speaking on behalf of the European Union, said that the first priority should be to ensure that the Special Rapporteur was allowed to visit the country in order to make an independent assessment of the situation. If he was unable to do so, she asked what his methods of work would be. The European Union would also like him to elaborate on the situation of women and children and on trafficking in persons.

66. **Mr. Vigny** (Switzerland) said that his delegation would like to hear more about strategies to promote human rights and what diplomatic tools or forms of support it could provide to the Special Rapporteur in accomplishing his mission.

67. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea) said that, as for next steps, emphasis should be placed on the international human rights framework as an entry point. Reports submitted by the Democratic People's Republic of Korea, as a party to four major human rights treaties, had already been considered by three of the committees established pursuant to those treaties. Thus, recommendations had already been made which could be followed up. The current focus on the rule of law also provided an entry point. Direct access to the country was important, and he had met with his counterparts in Geneva on an informal basis in an effort to gain it, but even without access, he welcomed any information from non-governmental, intergovernmental and United Nations system sources.

68. There was a need to promote the totality of human rights, including civil and political rights. His future strategy would be to use the United Nations framework and the instruments to which the Democratic People's Republic of Korea was already a party in order to raise questions of effective implementation. Member States could assist him by using their influence to help him gain access to the country and by helping to maintain a positive and

constructive dialogue within the international human rights framework.

69. **Mr. Pak** Gil Yon (Democratic People's Republic of Korea) said that the oral report of the Special Rapporteur was the ultimate manifestation of prejudice, unfairness and interference in the internal affairs of his country. Indeed, it was nothing but the repetition of slanderous allegations spread by forces hostile to the Democratic People's Republic of Korea. Even though the issues mentioned in his report had not been clarified, the Special Rapporteur had still not hesitated to include them, and had already passed reckless judgement on the situation of human rights in his country, which would resolutely challenge any attempt to infringe upon its sovereign responsibility for human rights questions and to slander its system.

70. The report was the result of a political plot on the part of Western countries to isolate his country under the pretext of human rights protection. The European Union had adopted a resolution criticizing his country and had unilaterally disrupted the human rights dialogue, which had been proceeding on good terms. If its assertion about human rights violations were fair, it should have questioned the armed invasion of Iraq by the United States of America, and yet it had not done so. His delegation wished to make it clear that the human rights abuses alleged in the oral report of the Special Rapporteur did not exist. The Special Rapporteur should expect no cooperation regarding implementation of that resolution as long as the European Union continued to work with the United States to isolate and suffocate his country and to treat it differently from others.

71. **Mr. Sun** Jin (China), referring to the oral report of the Special Rapporteur, said that illegal entry into his country and the question of refugees were two totally separate issues, and he hoped that the Special Rapporteur would take note of that fact. He would also like to remind the Special Rapporteur that there was a series of international treaties in force in that area, and that each State also had its own domestic legislation. With respect to the management of borders, each country had its own laws and regulations, and China's laws were less strict than those of other States.

72. **Mr. Muntarbhorn** (Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea), responding to comments, said that he looked forward very much to working with colleagues in the Democratic People's Republic of Korea to promote and protect human rights. He wished to point out that he had never lobbied for his current post, and was totally independent. He had tried to be balanced, and wished to invite the possibility of dialogue and cooperation, both formal and informal.

73. With respect to the comments made by the representative of China, he noted that there were at least two flows of refugees from the Democratic People's Republic of Korea. One was the traditional flow of refugees fleeing because of political dissidence or because of oppression or persecution, and the second was the flow driven by economic factors. One interpretation might be that those making up the latter flow might be illegal immigrants. However, since, if they returned they might face punishment, they might be regarded under international law as refugees.

74. Of course, refugees must abide by national law, but within the international framework. That meant that the principle of non-refoulement must be respected. Those who requested asylum should be given access to the Office of the United Nations High Commissioner for Refugees. In general, there should be greater international cooperation in that regard. If the country of first asylum was unwilling to accept the refugees, then the international community might wish to consider the possibility of third-country resettlement. Countries should be supported in order to ensure that the practice of asylum was respected in terms of international law, bearing in mind that the international community needed to share the burden.

75. **Mr. Pacéré** (Independent Expert on the situation of human rights in the Democratic Republic of the Congo), noted that, in its resolution 2004/84, the Commission on Human Rights had appointed him as an independent expert to assist the Government in the field of human rights, and had requested him to submit a progress report to the General Assembly at its fifty-ninth session. Since he had been appointed to his mandate so recently, he would not be in a position to provide a comprehensive written report at the current session.

76. He had visited the country from 22 August to 2 September 2004 and had spoken with representatives of government and of non-governmental organizations, among others. Grave violations of human rights and other crimes continued, especially in the eastern regions, and the justice system was underfunded,

understaffed and unable to cope with the situation. Both the Truth and Reconciliation Commission and the United Nations Organization Mission in the Democratic Republic of the Congo had testified to human rights violations. He believed that a body exercising international jurisdiction was required, because as long as impunity reigned, the country could not return to peace.

77. However, although intervention by the International Criminal Court (ICC) appeared to be the ideal solution, article 11 of the Rome Statute provided that the Court had jurisdiction only with respect to crimes committed after the date of entry into force of the Statute, namely, 1 July 2002. Crimes committed before that date — which had left at least 300,000 victims and included several massacres — were outside its jurisdiction. He therefore recommended that an international criminal tribunal for the Democratic Republic of the Congo should be set up, and that the Congolese Government should help to determine its modus operandi.

78. **Mr. Ileka** (Democratic Republic of the Congo) said that the context for the examination of the situation of human rights in his country had changed with the replacement of the Special Rapporteur by an independent expert and the establishment of a different mandate. His delegation thanked the independent expert for acknowledging the efforts of the National Transitional Government to reunify the country, restore peace and re-establish government authority. Those efforts would be continued with the support of the international community. However, despite the progress made since the signing of the Global and All-Inclusive Agreement in December 2002, the indiscipline, violence and insecurity continued, especially in the country's eastern regions, and were characterized in particular by violence against women, girls and children.

79. After five years of war, it would be an illusion to think that the country could return to peace and stability without attempting first to determine who was responsible for the crimes committed and bring justice to the victims. Prosecution of those crimes by the justice system would help bring about national reconciliation and consolidate the peace process. His delegation agreed with the independent expert that an international criminal tribunal should be created, but believed that such a tribunal should retain the country's existing justice system. The Congolese Government had supported the decision of the ICC to open an inquiry into the crimes committed from 1 July 2002 onwards, and an Agreement on the Privileges and Immunities of the ICC had been signed earlier in October 2004.

80. However, the crimes committed before 1 July 2002 could not go unpunished, and could not be resolved unless the international community agreed to set up an international criminal tribunal. He was aware that the idea of such a tribunal had not yet found the support of certain influential members of the international community. The domestic justice system could not be replaced. However, as the independent expert had pointed out, that system was in considerable disarray, and greater resources must be provided for reform. As with all countries in transition, restoration of the rule of law would depend on the shared responsibility of the Congolese State and the international community. In that context, his country welcomed the joint initiative of the European Commission and the French Government to restore the justice system in Bunia and hoped that the initiative could be extended to the rest of the country. His delegation agreed that assistance was essential to the process of restoring law and order, and called on the international community to aid his Government in its efforts. He expressed his Government's support for the recommendations of the independent expert and pledged its full cooperation.

81. **Ms. Vigani** (Switzerland) asked how the independent expert viewed the increasing ethnic tensions in the Democratic Republic of the Congo, and how he intended to deal with those tensions within the context of his mandate. She also wondered how he intended to support the Democratic Republic of the Congo in its cooperation with the ICC.

82. **Ms. Bakker** (Netherlands), speaking on behalf of the European Union, said that the issue of impunity was a matter of absolute priority, and welcomed the decision of the Chief Prosecutor of the ICC to open an investigation into the crimes committed in the Democratic Republic of the Congo. Noting that the independent expert had recently visited the country and held discussions with representatives of the Government and the Ministry of Justice, she wondered whether he could describe how the Congolese authorities had cooperated with the Office of the Chief Prosecutor and whether the independent expert intended to return to the country before the end of the

year. If that was the case, she wondered whether he would be dealing with specific issues for inclusion in his next report, and whether he would be meeting with the Congolese Minister for Human Rights, in order to ask her about her priorities and about any assistance she might require.

83. **Mr. Pacéré** (Independent expert on the situation of human rights in the Democratic Republic of the Congo) responded to members' questions. With respect to the increase in ethnic tensions, he noted that the areas in question were inhabited by very traditional societies. Moreover, that situation was compounded by conflict between States, the appropriation of land, and cross-border migratory movements that had not previously existed. That had led to unforeseeable consequences. It was a vast territory, and he had not been able to familiarize himself with all of it. However, for his next visit, which was scheduled for early November 2004, he had asked specifically to meet with the representatives of the major ethnic groups in an effort to find ways to prevent xenophobia, especially in the country's eastern regions.

84. With respect to the ICC, he felt that he could provide support by advising the Government to do its utmost to develop a link not only with the ICC, but also with the International Criminal Tribunals for Rwanda and the Former Yugoslavia. He had already contacted those bodies in order to obtain information that might be of interest to the Democratic Republic of the Congo.

85. **Ms. Verrier-Fréchette** (Canada) said that her country was very concerned about the acts of violence committed against civilians in the Democratic Republic of the Congo, especially acts of sexual violence against women, and wondered how the international community could be more effective in preventing such acts. It was also very concerned at the situation of displaced persons and refugees in the eastern part of the country, and wondered how the Government could work more effectively with the international community to protect their human rights.

The meeting rose at 6.10 p.m.